



COLUMBIA COMMUNICATIONS CORPORATION

7200 WISCONSIN AVENUE, SUITE 701 • BETHESDA, MARYLAND 20814  
TELEPHONE (301) 907-8800 • FACSIMILE (301) 907-2420

June 8, 1995

DOCKET FILE COPY ORIGINAL

RECEIVED

JUN - 8 1995

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

**BY HAND**

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, Room 222  
Washington, DC 20554

**Re: IB Docket Number 95-41**

Dear Mr. Caton:

Columbia Communications Corporation transmits herewith the original and nine copies of its Comments in response to the Notice of Proposed Rulemaking in the above-referenced docket. Included with this package is a duplicate "file copy" of this pleading. Please date stamp this copy and return it to the messenger delivering this filing.

Should there be any questions concerning this matter, please contact the undersigned.

Respectfully submitted,

*K. Gross By S.W.*

Kenneth Gross  
General Counsel

Enclosures

No. of Copies rec'd 279  
List A B C D E

BEFORE THE  
**Federal Communications Commission**  
WASHINGTON, D.C. 20554

**RECEIVED**

**JUN - 8 1995**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY  
**IB Docket No. 95-41**

In the Matter of )

Amendment to the Commission's )  
Regulatory Policies Governing )  
Domestic Fixed Satellites and )  
Separate International Satellite )  
Systems )

To: The Commission

DOCKET FILE COPY ORIGINAL

**COMMENTS OF COLUMBIA COMMUNICATIONS CORPORATION**

**COLUMBIA COMMUNICATIONS  
CORPORATION**

**Kenneth Gross  
General Counsel**

**7200 Wisconsin Avenue  
Suite 701  
Bethesda, Maryland 20814  
(301) 907-8800**

**June 8, 1995**

## **TABLE OF CONTENTS**

	<b><u>Page</u></b>
<b>SUMMARY</b> .....	<b>ii</b>
<b>I. Introduction</b> .....	<b>2</b>
<b>II. The Commission Should Adopt Its Proposal To Eliminate The Artificial Distinction Between Domestic and International Satellite Service, Permitting All U.S.-Licensed Satellite Systems To Serve All Points</b> .....	<b>3</b>
<b>III. The Commission Should Not Adopt The Domsat Financial Standard For Applications Seeking To Use Orbital Locations That Are Primarily Suitable For International Communications</b> .....	<b>6</b>
<b>IV. The Commission's New Regulatory Policy Should Apply Only To U.S.-Licensed And Regulated Satellite Systems, And Should Specifically Exclude Any Use Of INTELSAT Or INMARSAT Facilities For Domestic Purposes</b> .....	<b>8</b>
<b>A. The Commission Should Not Permit COMSAT To Convert INTELSAT Or INMARSAT Capacity For Domestic Use</b> .....	<b>8</b>
<b>B. Reciprocity Standards Developed In The Commission's Ongoing Market-Entry Proceeding Should Be Applied To Any Foreign-Affiliated Satellite System Seeking To Provide Service Within The United States</b> .....	<b>11</b>
<b>V. Conclusion</b> .....	<b>12</b>

## **Summary**

The Commission has proposed to eliminate much of the existing distinction between FCC-licensed domestic and international geostationary fixed-satellites, abandoning the current Transborder Policy and treating all such licensees under a single regulatory scheme. Columbia strongly supports this proposal.

The growth of a global economy has fostered an affirmative need for U.S. companies to make substantial use of both domestic and international communications capability. The current separation of domestic and international space segment deprives these companies of the opportunity to maximize use of a single service provider to meet their communications needs. For this reason, rather than being limited by artificial regulatory distinctions, satellite systems should be constrained by their technical capabilities alone. Permitting all operators to provide the widest range of service technically feasible would promote additional competition on price and service in the satellite services market generally, and provide additional, much-needed C-band capacity in the domestic market.

Columbia does not agree, however, that the two-stage financial showing should be abandoned for ocean region space stations intended to provide primarily international service. A change in regulatory policy does not change the reality that each orbital location has inherent limitations upon the actual provision of service. Orbital slots over the ocean regions, while they can provide some domestic service, are still primarily suited to the delivery of international services, and must rely primarily on the revenue generating capabilities of these services to obtain system financing. Given the still substantial uncertainties in consulting and operating satellites at these locations, the two-stage financial standard should be

retained for satellite proposals that would rely substantially on international traffic due to their orbital location.

Columbia also believes that it would be fundamentally inappropriate for COMSAT to be permitted to exploit its exclusive status within INTELSAT (or INMARSAT) to provide capacity for U.S. domestic service. INTELSAT has exhibited a clear proclivity for exploiting its market leverage and engaging in unfair competitive practices, e.g., using its vast inventory of transponder capacity to dump service at fire sale prices and conveniently reinterpreting its charter to permit Signatories to enter their domestic markets without paying for deployment of capacity dedicated to domestic purposes. Such anti-competitive behavior would cause dramatic distortions in the U.S. market for satellite services. To the extent that COMSAT desires to expand its provision of domestic service, it may apply for authority to construct, launch and operate additional satellites of its own.

Finally, because the INTELSAT and INMARSAT space segments are controlled by consortia of foreign entities -- indeed, primarily by foreign governments -- the issue of permitting this capacity to be used for domestic purposes must also necessarily be addressed in the Commission's ongoing proceeding concerning market entry and regulation of foreign-affiliated entities. Columbia believes that it is essential for the Commission, in order to achieve the goal of market liberalization, to establish a strict reciprocity requirement in that proceeding, conditioning market entry for all foreign companies on the openness of their own home markets.

BEFORE THE  
**Federal Communications Commission**  
WASHINGTON, D.C. 20554

**RECEIVED**

**JUN - 8 1995**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )

Amendment to the Commission's )  
Regulatory Policies Governing )  
Domestic Fixed Satellites and )  
Separate International Satellite )  
Systems )

IB Docket No. 95-41

To: The Commission

**COMMENTS OF COLUMBIA COMMUNICATIONS CORPORATION**

Columbia Communications Corporation ("Columbia") hereby comments on the Commission's recent proposal to modify substantially its regulatory policies governing domestic and international satellite systems. See Notice of Proposed Rulemaking, FCC 95-146 (released April 25, 1995) ("NPRM").

In its NPRM, the Commission proposed to eliminate much of the existing distinction between FCC-licensed domestic and international geostationary fixed-satellites, abandoning the current Transborder Policy and treating all such licensees under a single regulatory scheme. Columbia strongly supports these proposals.

In the NPRM, the Commission also solicited comment concerning other possible policy changes, including whether COMSAT should be permitted to use INTELSAT (or INMARSAT) capacity to provide domestic service and whether foreign-licensed systems should be permitted to offer services within U.S. borders. Columbia believes that it would be fundamentally inappropriate for COMSAT to be permitted to use the dedicated international satellite capacity of INTELSAT or INMARSAT to compete in the U.S. market, particularly when the number of

satellites operated by the international satellite organizations would give COMSAT the capability to engage in anti-competitive conduct that would be likely to distort the domestic market.

I. Introduction

As the Commission noted in the NPRM, this proceeding was sparked, in part, by Columbia's 1994 application seeking authority to provide a full range of services to domestic points using its leased capacity on the National Aeronautics and Space Administration ("NASA") Tracking and Data Relay Satellite System ("TDRSS"). See FCC File Nos. CSS-94-019 and CSS-94-020. Columbia currently leases and sells international satellite transponder capacity on two TDRSS satellites located at 41° West longitude and 174° West longitude. It has also been authorized to provide domestic services to Guam and other U.S. territories and possessions in the western Pacific. See Columbia Communications Corporation, 7 FCC Rcd 6616 (Com. Car. Bur. 1992).

As Columbia pointed out in its application, the Commission has moved incrementally, e.g., via its Transborder Policy,<sup>1/</sup> to authorize domestic satellite service providers to offer some international service and has also permitted separate systems to provide limited domestic service in certain instances, including Columbia's provision of domestic service in the western Pacific. The result of these changes has been the gradual erosion of the original distinction between domestic and international systems. Indeed, as Columbia also observed in its application, there is no underlying reason for maintaining the separate definitions of

---

<sup>1/</sup> See Transborder Satellite Video Services, 88 F.C.C.2d 258 (1981).

domestic and international systems because the distinction was never founded on any substantive policy determination. Accordingly, there is no reason U.S.-licensed satellite systems should continue to be precluded from competing with each other in a single market for geostationary fixed satellite services.

**II. The Commission Should Adopt Its Proposal To Eliminate The Artificial Distinction Between Domestic and International Satellite Service, Permitting All U.S.-Licensed Satellite Systems To Serve All Points.**

---

In the NPRM, the Commission has observed that the growth of a global economy has fostered an affirmative need for U.S. companies to make substantial use of both domestic and international communications capability. In the face of this identified need, the current separation of domestic and international space segment deprives companies of the opportunity to maximize use of a single service provider to meet their communications needs. Accordingly, there is a substantial policy reason to abandon the traditional domestic/international distinction.

The Commission prudently concluded in the NPRM that "the public interest would be best served by modifying [its] policies to reflect the global nature of telecommunications needs today," NPRM, FCC 95-146, slip op. at ¶ 17, and proposed to eliminate the current Transborder Policy and regulate all U.S.-licensed space segment providers under the rules established for separate systems, subject to appropriate modifications. This would permit all systems currently licensed by the FCC to offer both domestic and international service within their coverage areas, provided that the offering of international service is consulted under the terms of the INTELSAT Convention.



Of course, as the Commission observes, one necessary modification of the existing separate systems policy is the abandonment of the limitation to provision of domestic services that are "ancillary" to transmissions carried across international boundaries. See NPRM, FCC 95-146, slip op. at ¶ 20. Instead, all satellite space segment providers would be permitted to serve all points, within the United States or outside its borders, to which they can actually provide service. Rather than being limited by artificial regulatory distinctions, satellite systems would be constrained only by their own technical capabilities. Columbia agrees with the Commission's unassailable conclusion that:

Permitting all operators to provide the widest range of service offerings technically feasible and consulted by Intelsat will permit them to use their satellites more efficiently and to provide innovative and customer-tailored services. This should, in turn, benefit consumers by increasing service options, lowering prices, and facilitating the creation of a global information infrastructure.

NPRM, FCC 95-146, slip op. at ¶ 21. In particular, Columbia believes that the changes that the Commission proposes would promote additional competition on price and service in both the domestic and international satellite services markets, and will provide additional, much-needed C-band capacity in the domestic market.

It is paradoxical, in fact, that the Commission distinguished U.S.-licensed international satellite carriers from U.S. domestic carriers at the outset, given the fact that the decision to open up the international market to systems separate from INTELSAT was premised, in significant part, upon the benefits of unfettered competition in the domestic market resulting from the Commission's

"Open Skies" policy.<sup>2/</sup> International separate systems were simply established as a distinct category without full consideration of licensing all U.S. satellites to provide both domestic and international service.

Since the initial establishment of separate systems, there has been significant consolidation in the domestic satellite market, from six companies at the time separate systems were established to three currently -- Hughes, GE, and AT&T. As a result of this consolidation, competitive market forces have diminished significantly, lessening downward price pressures and reducing the incentive for diverse service offerings. At the same time, demand for satellite services of all types has grown substantially.

Today, there is a significant shortage of C-band transponder capacity for domestic use, which has already lead to the authorization of Columbia and other separate systems to provide needed domestic service on a temporary basis. Changing the current policy to remove artificial limits on separate systems providing domestic service would serve to alleviate this shortage on a continuing and permanent basis, while securing for users of domestic C-band capacity the benefits of price and service competition.

Finally, Columbia endorses the Commission's proposals to relax other regulatory requirements affecting satellite system operators. First, the Commission should not impose any special regulatory classification on these systems, but instead should simply allow each licensee to elect whether it will provide service

---

<sup>2/</sup> See Establishment of Satellite Systems Providing International Communications, 101 F.C.C.2d 1046, 1066 (1985) ("The domestic satellite industry exemplifies all the benefits of a competitive market.")

on a common carrier or a non-common carrier basis. See NPRM, FCC 95-146, slip op at ¶ 33. Second, the Commission should permit all domestically licensed earth stations to access freely U.S.-licensed, geostationary space segment without separate applications to utilize new or additional systems. Id. at ¶ 36. These steps will maximize the competition-enhancing benefits of the other measures proposed in the NPRM.

**III. The Commission Should Not Adopt The Domsat Financial Standard For Applications Seeking To Use Orbital Locations That Are Primarily Suitable For International Communications.**

Although Columbia is in broad agreement with the Commission concerning most of the changes proposed in the NPRM, it does not agree that the two-stage financial showing should be abandoned for space stations intended to provide primarily international service. The realities of gaining the necessary approvals to provide such service dictate that a more flexible standard continue to be employed for these applicants.

Although the policy modifications advanced by the Commission will permit all U.S.-licensed systems to provide both domestic and international service to the extent that they are able to do so, this change in regulatory policy does not change the reality that each space station is licensed to a particular orbital location with inherent limitations upon the actual provision of domestic service. Orbital slots over the ocean regions, while they can provide some domestic service, are still primarily suited to the delivery of international services, and must rely primarily on the revenues to be generated from such service in seeking system financing. Thus, it is inaccurate to conclude, as the Commission does, that "all applicants

should be able to obtain financial commitments based on the justified expectation of revenues from the provision of domestic service." NPRM, FCC 95-146, slip op. at ¶ 29. In fact, for a significant number of international orbital locations, the domestic services that can be offered will be limited to particular geographic areas and market niches.

Based on this reality, applicants for ocean region orbital locations must necessarily rely on the revenue to be generated from international service offerings -- and it is more difficult for international system operators to project and to rely on these revenues. Despite steps toward liberalization of the Article XIV(d) process, the more extensive involvement of foreign administrations in the consultation of international systems inevitably makes them more complex and protracted. Moreover, even after this process is concluded -- and in sharp contrast to domestic systems -- there are no guarantees that operators will be able to gain access to markets that lie within their coverage areas. It is therefore appropriate to continue to permit these applicants to rely on a two stage financial qualification standard given the greater uncertainties that exist in establishing systems primarily for international use. The existing financial standard for international separate systems has proven very successful, and has resulted in the establishment of three operating international separate systems under the current rules. Columbia suggests that the two-stage showing be retained for all ocean region satellite applicants that fall outside the domestic arc.

**IV. The Commission's New Regulatory Policy Should Apply Only To U.S.-Licensed And Regulated Satellite Systems, And Should Specifically Exclude Any Use Of INTELSAT Or INMARSAT Facilities For Domestic Purposes.**

---

The Commission has sought to nurture the separate satellite industry over the past decade to provide competition to INTELSAT. By taking the steps proposed in the NPRM, the Commission can achieve additional benefits by permitting these nascent, but tenacious, competitors to provide their capacity and competitive pricing in an increasingly consolidated U.S. domestic market. The Commission, however, should not contemplate allowing the use of INTELSAT or INMARSAT capacity to provide U.S. domestic services. In addition, use of foreign-licensed satellite systems to provide domestic service should be considered only in the context of the Commission's ongoing market entry proceeding, and should only be allowed on a basis of strict reciprocity.

**A. The Commission Should Not Permit COMSAT To Convert INTELSAT Or INMARSAT Capacity For Domestic Use.**

Provision of domestic service within the U.S. using the space segment capacity of the international satellite organizations would be fundamentally inconsistent with the essential missions of INTELSAT and INMARSAT, which were respectively established to provide global communications services between nations and to and from ships and other vessels traveling in international waters. These international satellite organizations were created with the clear purpose of marshalling the resources of many nations to meet a collective need, as well as to ensure that no nation or bloc of nations could dominate or control international satellite communications. While these organizations can be expected to play a

continuing role in international telecommunications in the future, this role is awaiting redefinition as the private sector has gained and developed the capability to provide significant telecommunications links with less significant government involvement. In this new environment, it would make no sense either to broaden the scope of services that are provided by the international satellite organizations or to divert international capacity to provide service within U.S. borders, where the private sector has always been the source of domestic satellite capacity.

With the addition of separate systems to the U.S. domestic market, half-a-dozen vigorously competing entities will be available to provide service on no fewer than thirty-five satellites.<sup>3/</sup> These entities include COMSAT, which currently provides domestic service using non-INTELSAT space stations.

If COMSAT were suddenly permitted to access INTELSAT's vast capacity to serve the United States, however, it would be able to use its existing market power -- transferred to the domestic arena -- to overwhelm other competitors. Such a step would be the equivalent of suddenly reconstituting the Old Bell System in the domestic telephone market, i.e., a mega-monopolist would have the instant ability to drive others from the market to the manifest detriment of consumers and the other competitors alike.

In other circumstances, INTELSAT has exhibited a clear proclivity for exploiting its market leverage and engaging in unfair competitive practices. With respect to international service, INTELSAT has used its vast inventory of transponder capacity to dump service at fire sale prices in order to undercut the

---

<sup>3/</sup> See NPRM, FCC 95-146, slip op. at ¶ 31.

ability of others to build or maintain market share. Of particular relevance to the issue here, INTELSAT has also conveniently reinterpreted its charter to permit entry into domestic markets absent the dedication of particular capacity to provide this service. Such creative steps allow INTELSAT Signatories to avoid paying for deployment of capacity which is dedicated for purely domestic purposes, i.e., the parent organization subsidizes the entry of a Signatory into its domestic market. Where the seller has no up front costs to recoup, underpricing the competition becomes a simple matter.

Moreover, COMSAT already has the capability to compete in the U.S. market without accessing INTELSAT or INMARSAT capacity for this purpose. COMSAT can continue to compete in this market using the space segment that it already operates, or additional satellites that it may seek to construct, launch and operate in the future. Maintaining the existing bar to provision of domestic service via INTELSAT or INMARSAT capacity would simply prevent COMSAT from unleashing upon the U.S. market a large quantity of transponder capacity, which was procured for use by all nations of the world, in a manner that would distort the U.S. market in catastrophic ways. In short, to the extent that COMSAT wishes to expand its provision of domestic service, it should do so in the same manner that any of the other U.S.-licensed service providers would, and not by exploiting its exclusive status within the intergovernmental treaty organizations to dramatically expand its domestic service capability at no cost to itself.

**B. Reciprocity Standards Developed In The Commission's Ongoing Market-Entry Proceeding Should Be Applied To Any Foreign-Affiliated Satellite System Seeking To Provide Service Within The United States.**

---

Because the INTELSAT and INMARSAT space segment is controlled by consortia of foreign entities -- indeed, primarily by foreign governments -- the issue of permitting this capacity to be used for domestic purposes must also necessarily be addressed in the Commission's ongoing proceeding concerning market entry and regulation of foreign-affiliated entities. See Market Entry and Regulation of Foreign-Affiliated Entities, FCC 95-53 (released February 17, 1995). Among the goals advanced by the Commission in that proceeding is the fostering of market liberalization in foreign countries, many of which still remain closed to entry by U.S. telecommunications companies. Id., slip op. at ¶ 31.

Instead of taking the extraordinary step of opening the U.S. domestic market to all comers, Columbia believes that it is essential for the Commission, in order to achieve the goal of market liberalization, to establish a strict reciprocity requirement. Under such a requirement, foreign entities would be permitted to invest in and participate in the U.S. market only to the same extent that U.S. companies are permitted to participate in investment and provision of satellite service in their home markets.

In the case of space segment controlled by INTELSAT and INMARSAT, such a standard would require that all nations participating in the international satellite organizations adopt market opening mechanisms before the organizations would be permitted to participate in the U.S. market. Of course, such reciprocity requirements would also apply to separate satellite systems and



other international carriers licensed by foreign governments that might seek entry to the U.S. market. These proposals are before the Commission in the market entry proceeding and should not be decided in the instant docket.

**V. Conclusion**

For the foregoing reasons, Columbia urges the Commission to adopt its proposed modification of its policies affecting domestic and international satellite service. The Commission should not, however, contemplate permitting the international transponder capacity operated by INTELSAT and INMARSAT to be converted to domestic use, as such a step would be inconsistent with the purposes for which these entities were established and would unreasonably distort the U.S. domestic market -- without any countervailing benefit to the public.

Respectfully submitted,

COLUMBIA COMMUNICATIONS CORP.

By: K. Gross By Sp.  
Kenneth Gross  
General Counsel

June 8, 1995

7200 Wisconsin Avenue  
Suite 701  
Bethesda, Maryland 20814  
(301) 907-8800